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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052314
Party	Defendant Cafe Mystique Inc.
Correspondence Address	JESS M. COLLEN COLLEN IP THE HOLYOKE-MANHATTAN BUILDING, 80 SOUTH HIGHLAND AVENUE OSSINING, NY 10562 UNITED STATES ogelber@collenip.com, tgulick@collenip.com, docket@collenip.com
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Signature	/Oren Gelber/
Date	01/06/2011
Attachments	K357 Motion for Emergency Hearing.pdf (30 pages)(1394298 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

MOTHER PARKER'S TEA & COFFEE,
INC.,

Petitioner,

v.

CAFÉ MYSTIQUE, INC.,

Registrant.

Cancellation No. 92052314
Mark: CAFÉ MYSTIQUE
Reg. No.: 3,514,570
Reg. Date: October 14, 2008

MOTION FOR EXTENSION OF DISCOVERY AND ALL SUBSEQUENT DATES AND
A FINDING THAT REGISTRANT HAS COMPLIED WITH 37 C.F.R. § 2.120(e) AND
TBMP § 523.02

Registrant, Café Mystique, Inc., by and through its attorneys, respectfully moves the Trademark Trial and Appeal Board for a 30 day extension of the discovery period and all subsequent dates, and/or a finding that it has made sufficient good faith efforts to resolve the outstanding discovery issues pursuant to 37 C.F.R. § 2.120(e) and TBMP § 523.02 meeting the requirement to file a Motion to Compel.

Registrant also requests an emergency hearing with the Trademark Trial and Appeal Board, should the Board deem it appropriate.

PRELIMINARY STATEMENT

Registrant served discovery requests on Petitioner on September 13, 2010. Following a short extension granted by Registrant, Petitioner served its responses to Registrant's discovery requests on October 29, 2010. Registrant identified various deficiencies in Petitioner's responses

and production on November 24, 2010, which Petitioner's counsel indicated on November 29, 2010 that she would address immediately. On December 17, 2010, having received no response and no supplement, Registrant sent a follow up letter to Petitioner's attorney seeking supplemental responses and documents and also to meet and confer.

Since that time, Petitioner has repeatedly confirmed its intention to supplement responses and documents. However, no documents or supplemental responses have been provided to Registrant. The Parties have been unable to find a suitable time to meet and confer.

Petitioner will depose Registrant's Rule 30(b)(6) witness on January 11, 2011. Registrant is scheduled to take the deposition of Petitioner's Rule 30(b)(6) witness on January 14, 2011. Registrant will be prejudiced if it does not receive Petitioner's supplemental responses and production because it will not have adequate time to review any such responses and documents before the deposition scheduled for January 14, 2011. As Petitioner has indicated that it is unlikely to reschedule the deposition, Registrant seeks to preserve its rights by requesting Board intervention.

FACTUAL BACKGROUND

On or about September 13, 2010, Registrant Café Mystique, Inc. served Discovery Demands (First Set of Interrogatories to Petitioner, Registrant's First Request for Production of Documents and Registrant's First Set of Requests for Admission) upon Petitioner Mother Parker's Tea & Coffee, Inc. On or about October 29, 2010, Petitioner served upon Registrant its Objections & Responses to Registrant's First Set of Interrogatories, Objections & Responses to

Registrant's First Request for Production of Documents¹ and Objections & Responses to Registrant's First Set of Requests for Admission.

On November 24, 2010, Registrant sent a letter to Petitioner, specifically detailing the deficiencies in Petitioner's responses and requesting that Applicant supplement and/or amend its responses accordingly.

On November 29, 2010 during a telephone conference between the parties on an unrelated issue, Petitioner's attorney acknowledged receipt of the Registrant's deficiency letter and indicated an intention to substantively address the deficiencies within the week. Late December 2, 2010, Petitioner emailed Registrant to advise that Petitioner required additional time to respond to Registrant's November 24, 2010 letter.

Having received no further acknowledgement of Registrant's November 24, 2010 deficiency letter, Registrant sent a follow up letter to Petitioner, reiterating the outstanding—and unaddressed—deficiencies on December 17, 2010. Registrant's December 17, 2010 letter sought to meet and confer with Petitioner regarding these discovery issues in order to avoid the need for Board intervention or unnecessary motion practice. On December 19, 2010 Petitioner's attorney confirmed her availability for a meet and confer December 22, 2010 and indicated that she would be out for the Christmas holiday starting December 23, 2010. See Exhibit B to Declaration of Oren Gelber (Gelber Decl.) (December 19, 2010 email 11:53PM). After the close of business on December 20, 2010, Petitioner's attorney unilaterally cancelled the scheduled meet and confer telephone conference and indicated that she was preparing a response to the deficiency letter. See Exhibit B to Gelber Decl. (December 20, 2010 email 11:40PM). Seeking to find a resolution

¹ Registrant granted Petitioner a reciprocal extension of time to the one offered by Petitioner to respond to discovery requests provided that discovery responses and document production was served in-hand by the extended due date. Although Petitioner did serve its discovery responses in-hand by the extended deadline, it did not produce responsive documents per the terms of the Parties' agreement. Petitioner acknowledged in writing that it failed to meet its obligation to produce documents in-hand by the extended deadline.

between the parties and noting the upcoming close of the discovery and scheduled discovery depositions, Registrant responded on December 21, 2010, that it would consent to reschedule the meet and confer (which would, in turn, delay receipt of supplemental discovery and supplemental and amended discovery from Petitioner) provided that Petitioner would agree to extend discovery by two weeks. See Exhibit B to Gelber Decl. (December 21, 2010 email 3:12PM). Petitioner refused to entertain any extension of the discovery period or to meet and confer on December 22, 2010, as previously scheduled. See Exhibit B to Gelber Decl. (December 21, 2010 email 6:34PM). In the same email of December 21, 2010, Petitioner's counsel indicated that she would provide supplemental discovery responses the week of December 27, 2010 ("I will be providing a supplement to Mother Parker's discovery responses next week"). *Id.* (Despite this representation by Petitioner, Registrant did not receive any supplemental discovery responses or production from Petitioner the week of December 27, 2010.) Again seeking to find a workable solution, Registrant inquired on December 22, 2010 whether any of the other attorneys representing Petitioner were available for the meet and confer. See Exhibit B to Gelber Decl. (December 22, 2010 email 10:26AM). Registrant further indicated that it would take appropriate steps to preserve its client's rights in the event that a meet and confer could not be scheduled. *Id.* Petitioner's attorney noted that the other attorneys working on this case were unavailable. See Exhibit B to Gelber Decl. (December 22, 2010 email 12:44PM). The intervening Christmas holiday and Petitioner's attorney's vacation precluded further discussion.

On December 27, 2010, the first business day after the Christmas holiday, the father-in-law of Oren Gelber, attorney for Registrant, passed away. See Gelber Decl., ¶ 9. The supervising partner overseeing Ms. Gelber's work, Jess Collen, informed Petitioner's attorney of the

situation on December 28, 2010. See Gelber Decl., ¶ 10. Ms. Gelber was subsequently out on bereavement leave through January 4, 2011. See Gelber Decl., ¶ 9.

Immediately upon her return to the office on January 5, 2011, Ms. Gelber reviewed earlier emails from Petitioner's counsel indicating that supplemental responses were forthcoming (See Exhibit A to Gelber Decl., January 2, 2011 email 9:54PM) and contacted counsel for Petitioner and again sought to meet and confer regarding discovery deficiencies. See Exhibit A to Gelber Decl. (January 5, 2011 email 2:54PM). Petitioner's attorney indicated that she was unavailable and again suggested a later date. See Exhibit B to Gelber Decl. (January 5, 2011 email 4:01PM). Registrant's counsel noted the upcoming depositions and impending close of discovery and advised that a meet and confer was necessary prior to Friday January 7, 2011 and suggested that perhaps a short extension of the discovery period would be in order to allow for the Parties to resolve the discovery disputes before the deposition of Petitioner's Rule 30(b)(6) witness. See Exhibit B to Gelber Decl. (January 5, 2011 email 6:25 PM). Petitioner's counsel agreed to a one week extension of the discovery period. See Exhibit B to Gelber Decl. (January 5, 2011 email 8:03 PM). Registrant confirmed the one week extension on January 6, 2011 and suggested alternative dates for the deposition of Petitioner's Rule 30(b)(6) witness. See Exhibit B to Gelber Decl. (January 6, 2011 email 9:52 AM). In response, Petitioner's attorney stated that she could not agree to reschedule the deposition at this time, that she would inquire about other dates but "don't plan on it." See Exhibit B to Gelber Decl. (January 6, 2011 email 11:24 AM). When Registrant noted that holding the deposition as scheduled would frustrate the purpose of the one week extension of discovery, Petitioner's counsel again promised that supplemental responses and production were forthcoming. See Exhibit B to Gelber Decl. (January 6, 2011 email in 10:58 AM and 12:28 PM). Indeed, Petitioner's counsel goes so far as to admit that she

has delayed in providing supplemental discovery responses and documents. See Exhibit B to Gelber Decl. (January 6, 2011 email 12:28 PM).

Having exhausted all potential avenues with Petitioner and given the upcoming depositions of Registrant's witness on January 11, 2011 and Petitioner's witness on January 14, 2011, Registrant requires the Board's intervention to extend the discovery period and all subsequent dates by 30 days and for a finding that it has made sufficient good faith efforts to resolve the outstanding discovery issues pursuant to 37 C.F.R. § 2.120(e) and TBMP § 523.02 meeting the requirement to file a Motion to Compel.

DISCUSSION

Petitioner has promised time and time again to address its discovery deficiencies. To date, Petitioner has provided no supplemental responses or document production as it is required by TBMP § 408.03 and Fed. R. Civ. P. 26(e). By its own admission, Petitioner has withheld its supplemental responses and documents in violation of the Trademark Rules. See Exhibit B to Gelber Decl., January 6, 2011 email. Registrant has also sought to meet and confer with Petitioner regarding these outstanding discovery responses and documents since at least December 17, 2010, but such efforts have been forestalled by Petitioner's repeated promises that supplemental documents and briefly interrupted by a death in Ms. Gelber's family. If Petitioner had provided its supplement in a timely manner, a meet and confer would not be necessary.

With less than 5 business days until the noticed Rule 30(b)(6) deposition of Petitioner's representative and given Petitioner's counsel's indication that a rescheduling of the deposition is unlikely, Registrant seeks the Board's intervention.

Registrant merely seeks a fair and reasonable opportunity to receive and review Petitioner's full and complete discovery responses and production prior to the deposition of Petitioner's Rule 30(b)(6) witness. Registrant is prepared to move to compel Petitioner's responses, but has been stymied by Petitioner's promises to supplement and the avoidance and delay of a meet and confer.

Accordingly, Registrant requests an Order of the Board that it has made sufficient good faith efforts to resolve the outstanding discovery issues pursuant to 37 C.F.R. § 2.120(e) and TBMP § 523.02, as required in order to file a Motion to Compel.

Registrant also requests that the Board extend the discovery period and all subsequent dates in this Cancellation 30 days to allow the Parties to work out a mutually acceptable schedule for the deposition of Petitioner's Rule 30(b)(6) witness once Registrant has received Petitioner's full and complete discovery responses and documents. Subject to receipt and review of Petitioner's responses. Registrant suggests the following schedule:

Discovery Closes:	February 19, 2011
Plaintiff's Pretrial Disclosures:	April 5, 2011
Plaintiff's 30-day Trial Period Ends:	May 20, 2011
Defendant's Pretrial Disclosures:	June 4, 2011
Defendant's 30-day Trial Period Ends:	July 19, 2011
Plaintiff's Rebuttal Disclosures:	August 3, 2011
Plaintiff's 15-day Rebuttal Period Ends:	September 2, 2011

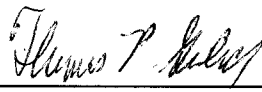
Registrant represents that good cause exists for an extension, and that Registrant is submitting this Motion in good faith, and not for the purpose of undue delay.

Registrant respectfully seeks an emergency hearing with the Board, should the Board deem it appropriate or should the Board require additional information

CONCLUSION

WHEREFORE, Registrant respectfully requests that its Motion for Extension of Discovery and All Subsequent dates be granted. Registrant also seeks a finding that Registrant has made sufficient good faith efforts to resolve the outstanding discovery issues pursuant to 37 C.F.R. § 2.120(e) and TBMP § 523.02.

Respectfully submitted,

By: 
Jess M. Collen
Thomas P. Gulick
Oren Gelber
COLLEN IP
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
Attorneys for Registrant Café Mystique, Inc.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

MOTHER PARKER'S TEA & COFFEE,
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CAFÉ MYSTIQUE, INC.,

Registrant.

Cancellation No. 92052314

Mark: CAFÉ MYSTIQUE

Reg. No.: 3,514,570

Reg. Date: October 14, 2008

DECLARATION OF OREN GELBER

I, Oren Gelber, declare as follows:

1. I am an attorney at the firm Collen IP, attorney for Café Mystique, Inc. I submit this declaration in support of Registrant's Motion for Extension of Discovery and All Subsequent Dates and a Finding that Registrant has Complied with 37 C.F.R. § 2.120(e) AND TBMP § 523.02. The facts set forth in this Declaration are personally known to me and I have first hand knowledge thereof. If called as a witness, I could and would competently testify to all facts within my personal knowledge, except where stated upon information and belief.

2. On or about September 13, 2010, Registrant Café Mystique, Inc. served upon Petitioner Mother Parker's Tea & Coffee, Inc., its First Set of Interrogatories to Petitioner, Registrant's First Request for Production of Documents and Registrant's First Set of Requests for Admission.


3. On or about October 29, 2010, Petitioner served upon Registrant its Objections & Responses to Registrant's First Set of Interrogatories, Objections & Responses to Registrant's First Request for Production of Documents and Objections & Responses to Registrant's First Set of Requests for Admission.

4. On November 24, 2010, Registrant sent a letter to Petitioner, specifically detailing the deficiencies in Petitioner's responses and requesting that Applicant supplement and/or amend its responses accordingly.
5. On November 29, 2010, counsel for Registrant and counsel for Petitioner engaged in a telephone conference. During this conference call Petitioner's attorney acknowledged receipt of the Registrant's deficiency letter and indicated an intention to substantively address the deficiencies within the week.
6. On December 2, 2010, Petitioner emailed Registrant seeking additional time to respond to Registrant's November 24, 2010 deficiency letter.
7. On December 17, 2010, Registrant sent a follow up letter to Petitioner, reiterating the outstanding and still unaddressed deficiencies. Registrant's December 17, 2010 letter included a request for the Parties to meet and confer regarding these discovery issues.
8. Exhibit B is a true and correct copy of an email chain between Registrant's attorneys and Petitioner's attorneys, commencing with the transmission of Registrant's December 17, 2010 deficiency letter and concluding on December 22, 2010, regarding Petitioner's discovery deficiencies and scheduling a meet and confer. The email chain is in reverse chronological order with the most recent email appearing first.
9. On December 27, 2010 my father-in-law passed away suddenly. I was out of the office on bereavement leave through January 4, 2011.
10. Jess Collen, managing partner of Collen IP and my supervising attorney, contacted Priscilla Dunckel, counsel for Petitioner, on December 28, 2010 to advise that I had a death in the family and would be unavailable.

11. Exhibit A is a true and correct copy of an email chain between Registrant's attorneys and Petitioner's attorneys, commencing January 2, 2011 and concluding January 6, 2011 regarding the scheduling of a meet and confer and upcoming deadlines. The email chain is in reverse chronological order with the most recent email appearing first.

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed January 6, 2011, at Ossining, New York.



Oren Gelber

EXHIBIT A

Oren Gelber

From: Priscilla.Dunckel@bakerbotts.com
Sent: Thursday, January 06, 2011 12:28 PM
To: Oren Gelber
Cc: Jess Collen; Thomas Gulick; cecily.porterfield@bakerbotts.com
Subject: RE: Call regarding discovery
TimeMattersID: M3C509E7E5981274
TM Contact: Colas Moreira Kazandjian Zikovsky
TM Matter No: K357
TM Matter Reference: CAFE MYSTIQUE cancel 92052314 Café Mystique Inc. v American Airlines and Higgins and Burke

First of all, you will get full and complete discovery responses and document production prior to the deposition of Mother Parker's witness with enough time to review the responses and documents.

As you know, you are the ones who insisted on waiting until the last minute to do depositions. You only noticed my client's deposition yesterday, just 15 days before the scheduled end of discovery. This has nothing to do with your bereavement leave but your own delay. I sent multiple emails trying to get you to confirm a schedule and you ignored them all. I'll be happy to send the TTAB all of the documentation on the communications regarding my attempts to schedule both of the depositions for months, and my multiple emails in December regarding the scheduling of Mother Parker's deposition.

I cannot now just reschedule the deposition to your suiting because you decided to wait until the absolutely last minute. My client has his own commitments, and I don't yet know what they are for the new dates you have requested. You also wanted to discuss our discovery, which is why I have been waiting before sending you the supplemental discovery. I want to hear what it is you feel we are missing before sending you our response to your letter, to see if there is anything that is legitimate that I haven't included. Around December 20th, when you demanded I drop everything to meet your request for a call, you told me you were not available last week for the call. That was about two weeks before your father in law passed away. So, the fact that you were out two days this week doesn't have anything to do with anything. Unexpected things happen, which is why the TTAB recommends that discovery be done early. I gave you the one week courtesy anyway.

I do not understand why you believe you can demand a call with less than 24-48 hours notice, and then be upset if I have other things scheduled and can't meet your deadline. We are extremely busy right now, which is why I tried to get you to deal with all of this a couple of months ago.

I told you I would see if I can get another date for the deposition, but I can't promise anything. If the extension doesn't do you any good, then so be it. Please go ahead if you want to schedule an emergency hearing. Please also include your objections to the deposition topics as issues to discuss. Unless we can reach an agreement on some of your objections, then we would have needed the emergency hearing anyway. Please schedule it for tomorrow, Friday, January 7th, preferable in the afternoon.

Priscilla L. Dunckel
Baker Botts LLP
2001 Ross Avenue
Suite 600
Dallas, Texas 75201
(214) 953-6618 direct phone
(214) 661-4618 direct fax
priscilla.dunckel@bakerbotts.com

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From: Oren Gelber [mailto:ogelber@collenip.com]
Sent: Thursday, January 06, 2011 10:58 AM
To: Dunckel, Priscilla
Cc: Jess Collen; Thomas Gulick; Porterfield, Cecily
Subject: RE: Call regarding discovery

Priscilla,

Granting the extension of discovery is pointless if Petitioner does not receive full and complete discovery responses and document production prior to the deposition of Mother Parker's witness or if we do not have adequate time to review such responses and documents. We need a fair opportunity to review Petitioner's responses and documents prior to the deposition.

As stated in my email yesterday, based upon the current schedule there are five business days for Petitioner to produce all its responses and documents and for Registrant to review these responses and documents and prepare for the deposition of Mother Parker's witness. An extra week after the fact does nothing to ease this very tight schedule for resolving this discovery dispute.

You leave us no choice but to seek an emergency conference with the Board.

Sincerely,

Oren

Ms. Oren Gelber
Associate

COLLEN IP
INTELLECTUAL PROPERTY LAW
The Holyoke-Manhattan Building

1/6/2011

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From: Priscilla.Dunckel@bakerbotts.com [mailto:Priscilla.Dunckel@bakerbotts.com]
Sent: Thursday, January 06, 2011 11:24 AM
To: Oren Gelber
Cc: Jess Collen; Thomas Gulick; cecily.porterfield@bakerbotts.com
Subject: RE: Call regarding discovery

My client has already cleared his schedule for the 14th, and I have already told you that he is not available on the 19th. I do not know his schedule for the other dates. (By the way, I don't believe the 18th was ever proposed--I believe it was only the 19th, but I may be wrong.) I tried to call him this morning but got his voicemail. At this point, the deposition is in place for the 14th, and I cannot agree that the deposition be rescheduled. I will see if we can accommodate one of the other dates, but I am unsure at this point, so don't plan on it.

As far as sales information for 2010, I was expecting year to date information in order to prepare for the deposition next week.

Also, I am considering your objections to the deposition topics, to determine if we will need to have an emergency hearing with the TTAB attorney tomorrow, before the deposition, to resolve some of the issues as to what must be answered. Your continuing efforts to "hide the ball" and objections to give information that is clearly discoverable concerns me. I don't want to get into the deposition and have whichever attorney is going to defend your client instruct him not to answer questions that are clearly relevant and discoverable, or get such vague answers that it is impossible to discern discoverable facts.

I obviously have no concern with your objections as to privileged communications, attorney work product, etc. I have no intention of asking for that type of information, and it was unnecessary to put those objections in writing since they can be put on the record during the deposition if a question extends into that area, and the client obviously doesn't have to answer them. I will let you know if I believe an emergency hearing is necessary to resolve some of these issues.

I will continue to try to reach my client today about the deposition date.

1/6/2011

From: Oren Gelber [mailto:ogelber@collenip.com]
Sent: Thursday, January 06, 2011 9:52 AM
To: Dunckel, Priscilla
Cc: Jess Collen; Thomas Gulick; Porterfield, Cecily
Subject: RE: Call regarding discovery

Priscilla,

Thank you. I will file a consented Motion with the Board later today and forward you a copy via email.

Given the extension of discovery, please advise if you and Mother Parker's designated Rule 30 (b)(6) witness are available January 18, 19, 20, 25, 26, or 27. Once we have a firm date in place, we will re-issue our Rule 30(b)(6) Notice of Deposition.

We confirm that we are available to meet and confer with you tomorrow at 3:00pm EST/2:00pm CST. As I indicated previously, we can address any questions you may have at that time.

As to 2010 sales information, at the time our responses were served, total sales for the whole year were unavailable because the year had not ended. We will request this information from our client, and do our best to provide you with it as soon as possible.

Sincerely,

Oren

Ms. Oren Gelber
Associate

COLLEN IP

INTELLECTUAL PROPERTY LAW

The Holyoke-Manhattan Building

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From: Priscilla.Dunckel@bakerbotts.com [mailto:Priscilla.Dunckel@bakerbotts.com]
Sent: Wednesday, January 05, 2011 8:03 PM
To: Oren Gelber
Cc: Jess Collen; Thomas Gulick; cecily.porterfield@bakerbotts.com
Subject: RE: Call regarding discovery

In light of the circumstances, I'll be happy to grant a one-week extension.

From: Oren Gelber [mailto:ogelber@collenip.com]
Sent: Wednesday, January 05, 2011 6:25 PM
To: Dunckel, Priscilla
Cc: Jess Collen; Thomas Gulick; Porterfield, Cecily
Subject: RE: Call regarding discovery

Priscilla,

I appreciate your condolences.

Given the present schedule and the close of discovery, Friday is too late for the meet and confer. If Petitioner will consent to extend the discovery period a week in light of my bereavement leave, I believe a Friday meet and confer would allow enough time to ensure that all discovery is in order. Such an extension is reasonable and would not prejudice either party. It would also reciprocate the courtesy we granted you during Jennifer's family related absence.

If we cannot come to an agreement (either meeting and conferring tomorrow or extending discovery and meeting and conferring on Friday), we will request an emergency conference with the Board concerning the meet and confer requirement and the upcoming close of discovery.

We sought to meet and confer with Petitioner regarding its discovery responses since the week of December 20. You committed to December 22 but then indicated you had intervening scheduling conflicts. Subsequent dates were foreclosed due to the sudden passing of my father-in-law and my subsequent absence. You also indicated as far back as November 29, 2010 that you would provide a substantive response to our deficiency letter and supplement Petitioner's responses, but we have not received any response or any supplements to date.

Registrant is entitled to have your full and complete responses and documents prior to the deposition of Mother Parker's Rule 30(b)(6) witness. We also need adequate time prior to this deposition to review any supplemental responses and documents.

You indicated previously that your client is unavailable January 18 or 19 (please note that these are still our preferred dates), which leaves us less than 7 business days to resolve the discovery

1/6/2011

issues, receive and review your supplemental responses and documents and prepare to take the deposition of your client's designated witness. Given this increasingly tight timeframe, a meet and confer needs to be held prior to Friday, January 7, 2011.

Sincerely,

Oren

Ms. Oren Gelber
Associate

COLLEN *IP*

INTELLECTUAL PROPERTY LAW

The Holyoke-Manhattan Building

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From: Priscilla.Dunckel@bakerbotts.com [mailto:Priscilla.Dunckel@bakerbotts.com]

Sent: Wednesday, January 05, 2011 4:01 PM

To: Oren Gelber

Cc: Jess Collen; Thomas Gulick; cecily.porterfield@bakerbotts.com

Subject: RE: Call regarding discovery

Ok, good to hear you are back. I'm sorry to hear of your loss.

Tomorrow is really crazy, as is this afternoon. Can we schedule the meet and confer for Friday afternoon? I am open after 2:00 CST/3:00 EST. Thanks.

Also, when you mention the deposition of Mother Parker's, at this point, none is scheduled. My client was asking about it yesterday. Would you please email me with what date you are proposing so I can find out if he is available? It would be helpful if I can get this before Friday. Thanks.

Priscilla L. Dunckel
Baker Botts LLP

1/6/2011

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Cc: Jess Collen; Thomas Gulick; Porterfield, Cecily
Subject: RE: Call regarding discovery

Priscilla,

I am back in the office.

Please advise of your availability for a meet and confer sometime tomorrow. We can discuss any questions you may have regarding my letters at that time and clear up any issues relating to our deposition of Mother Parker's Rule 30(b)(6) witness during our call.

Sincerely,

Oren

Ms. Oren Gelber
Associate

COLLEN IP

INTELLECTUAL PROPERTY LAW

The Holyoke-Manhattan Building

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From: Priscilla.Dunckel@bakerbotts.com [mailto:Priscilla.Dunckel@bakerbotts.com]
Sent: Sunday, January 02, 2011 9:54 PM
To: Jess Collen; Thomas Gulick; Oren Gelber
Cc: Jess Collen; Thomas Gulick; cecily.porterfield@bakerbotts.com
Subject: Call regarding discovery

All--

I am not sure if Oren will be back in the office, but I wanted to follow up regarding her request for a call to discuss discovery. I am available to have a call tomorrow regarding discovery. Right now, I am available any time after 2:00 p.m. Central/3:00 p.m. Eastern Standard time.

Mother Parker's supplemental responses have been sent to the client for verification. I'll send them to you as soon as I receive the approval. However, there are several questions in Oren's letter regarding responses I don't believe need to be supplemented. A conversation may help.

I am assuming that the deposition of your client next Tuesday will be in your office in Ossining. If that is not correct, please let me know tomorrow. I plan to have our travel office make my travel arrangements tomorrow, and the flight schedule will need to be different if you are going to change the deposition to Manhattan. I also need to find out if we have a conference room available if you would like to have the deposition in our Baker Botts office.

Also, you have still not arranged a date for the deposition of my client. Have you decided against taking it?

Priscilla L. Dunckel
Partner
Baker Botts LLP
2001 Ross Avenue
Suite 600
Dallas, Texas 75201
(214) 953-6618 direct phone
(214) 661-4618 direct fax
priscilla.dunckel@bakerbotts.com

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EXHIBIT B

Oren Gelber

From: Priscilla.Dunckel@bakerbotts.com
Sent: Wednesday, December 22, 2010 2:04 PM
To: Oren Gelber
Cc: Jess Collen; Thomas Gulick; Jennifer.Scannell@bakerbotts.com; cecily.porterfield@bakerbotts.com
Subject: RE: CAFE MYSTIQUE
TimeMattersID: MC1BF9E6F198B348
TM Contact: Colas Moreira Kazandjian Zikovsky
TM Matter No: K357
TM Matter Reference: CAFE MYSTIQUE cancel 92052314 Café Mystique Inc. v American Airlines and Higgins and Burke

I correct my last statement. It should say that no deposition of Mother Parker's is currently scheduled. There is a deposition scheduled for your client on January 11th.

From: Dunckel, Priscilla
Sent: Wednesday, December 22, 2010 12:44 PM
To: 'Oren Gelber'
Cc: Jess Collen; Thomas Gulick; Scannell, Jennifer; Porterfield, Cecily
Subject: RE: CAFE MYSTIQUE

All--

I am now off my conference call and will be tied up all afternoon. As I said in my earlier email, Jennifer Scannell is out on maternity leave. Therefore, I do not have anyone who is familiar with the discovery requests and responses to answer your questions.

Please note that I have no objection to you taking whatever actions you deem "necessary" in order to "preserve your client's rights in this proceeding." I am happy that you are now paying attention and engaged in the discovery process, which I have tried to get you to do for months. However, that does not give you a right to make unreasonable scheduling demands during a short week just because you seem to have some time available.

You sent me an email after 6:00 p.m. last Friday when I was on a flight out of town, demanding to "meet and confer" tomorrow, a day that our firm is closed for the Christmas holidays. Nevertheless, I would have been happy to have a call anyway, however, I am traveling for the holidays and am not available tomorrow. I attempted to accommodate your sudden urgent need to discuss discovery, by proposing a call today. However, I am working on multiple other things, including a deal where I have documents to turn around today, and I am unable to accommodate your scheduling demand. Therefore, I have asked to reschedule the call for a few days from now, and had offered any day next week except Monday morning when I am traveling.

It appears that based on your email below that you are now suddenly available next week, when you said earlier you were not available. Therefore, I propose that we set up a call on Wednesday, December 29, at 2:00 p.m. CST/ 3:00 p.m. EST. That will still allow you 3 weeks plus a day before discovery closes.

You have all been aware of the deadline for discovery for months. I have clearly advised you over and over for at least a couple of months that we do not believe any extension should be necessary. I have not seen anything that would change my mind. You still have nearly a month before the end of discovery, and plenty of time to do whatever is necessary to complete discovery.

Please let me know if you are available next Wednesday, or if not, please propose some other dates and times. I will do whatever I can to make time to discuss discovery issues with you, but this is not the only

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case I am working on, so I will need to work around other commitments.

I look forward to working cooperatively with you over the next month to complete discovery for both sides.

I will look for your response regarding your availability next Wednesday. Also, it will be helpful if you will let me know if you plan to take my client's deposition on January 14th, 2010, when we have notified you he is available. At this time, no deposition is scheduled.

Thanks.

Priscilla

From: Oren Gelber [mailto:ogelber@collenip.com]
Sent: Wednesday, December 22, 2010 10:26 AM
To: Dunckel, Priscilla; Scannell, Jennifer
Cc: Jess Collen; Thomas Gulick
Subject: RE: CAFE MYSTIQUE

Priscilla,

If your schedule no longer permits you to meet and confer today, perhaps one of your associates is available. You previously advised that Jennifer Scannell was responsible for Petitioner's discovery responses. As such, she should be aware of the issues and could meet and confer with us towards resolving these issues. Jennifer Ayers of your firm also joined you during our meet and confer in November and perhaps she is available.

We have provided you with reasonable alternatives to a meet and confer this week, following your cancellation of the previously agreed to date and time. If Petitioner insists on sticking to the current calendar, then we must meet and confer this week so that Café Mystique can obtain and review Petitioner's full and complete discovery responses and documents prior to the deposition of Mother Parker's 30(b)(6) witness.

We remain willing and able to meet and confer today, any time before 12:30pm EST and after 4:00pm EST or at any time tomorrow. We are also amenable to scheduling a meet and confer next week or in early January provided that the discovery is extended by a suitable time frame.

If Petitioner will not meet and confer with us this week or alternatively extend discovery to permit a meet and confer at a later date, we will take all necessary actions in order to preserve our client's rights in this proceeding.

I look forward to hearing from you at your earliest opportunity.

Sincerely,

1/6/2011

Oren

Ms. Oren Gelber
Associate

COLLEN *IP*

INTELLECTUAL PROPERTY LAW

The Holyoke-Manhattan Building

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From: Priscilla.Dunckel@bakerbotts.com [mailto:Priscilla.Dunckel@bakerbotts.com]

Sent: Tuesday, December 21, 2010 6:34 PM

To: Oren Gelber; Jennifer.Scannell@bakerbotts.com

Cc: Jess Collen; Thomas Gulick

Subject: RE: CAFE MYSTIQUE

Oren--

I see no reason that we would need any extension of the discovery period. I will be providing a supplement to Mother Parker's discovery responses next week, once things slow down around here (I hope). It shouldn't make any difference if we talk late tomorrow before I leave town, or if you receive the supplement next week. I will keep your comments in mind from your letter dated December 17th. (I haven't compared, but I assume it has restated your questions from the November 24th letter, so I will review and respond only to the December 17th version.)

If you would like to discuss Mother Parker's discovery, I will be happy to have a call to meet and confer next week, or the following week. I have not yet had a chance to review your supplemental response I received late Friday in detail, so I may have questions of my own. I apologize that I couldn't accommodate your request for a call this week--I have been working on a couple of deals with schedules set by others, and our office is closed for the holidays on Thursday and Friday. Please propose a couple of days and times that work for you in those two weeks. That still allows two or three weeks before discovery closes, depending on which week you choose. I will be happy to work with you cooperatively to get the discovery done by the discovery deadline.

I am still waiting for your response regarding whether you will be taking my client's deposition on January 14th.

Happy Holidays to all of you!

Priscilla

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From: Oren Gelber [mailto:ogelber@collenip.com]
Sent: Tuesday, December 21, 2010 3:12 PM
To: Dunckel, Priscilla; Scannell, Jennifer
Cc: Jess Collen; Thomas Gulick
Subject: RE: CAFE MYSTIQUE

Priscilla,

Next week is problematic for us and we seek to avoid any further delay in resolving these issues, especially in light of the upcoming close of discovery.

If Petitioner will agree to a two week extension of the discovery period (from January 20 to February 3), we will agree to defer the meet and confer currently scheduled for December 22, 2010 at 4pm EST/3pm CST. Such an extension would also allow the parties to nail down a date for deposing Mother Parker's 30(b)(6) witness.

Sincerely,

Oren

Ms. Oren Gelber
Associate

COLLEN IP

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From: Priscilla.Dunckel@bakerbotts.com [mailto:Priscilla.Dunckel@bakerbotts.com]
Sent: Monday, December 20, 2010 11:40 PM
To: Oren Gelber; Jennifer.Scannell@bakerbotts.com

1/6/2011

Cc: Jess Collen; Thomas Gulick
Subject: RE: CAFE MYSTIQUE

Oren--

Can we please push this to next week? My schedule has tightened up such that I won't be able to do the call on Wednesday. Unfortunately, I have some other things going on where I am not in control of the schedule. I will be in all week next week except Monday morning. Can we set up a call on Tuesday, December 28th? Will that work for you?

I will also be preparing a response to your letter, but agree that a call will probably be helpful.

Thanks.

Priscilla L. Dunckel
Baker Botts LLP
2001 Ross Avenue
Suite 600
Dallas, Texas 75201
(214) 953-6618 direct phone
(214) 661-4618 direct fax
priscilla.dunckel@bakerbotts.com

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From: Oren Gelber [mailto:ogelber@collenip.com]
Sent: Monday, December 20, 2010 3:20 PM
To: Dunckel, Priscilla; Scannell, Jennifer
Cc: Jess Collen; Thomas Gulick
Subject: RE: CAFE MYSTIQUE

Thank you. We would appreciate that.

We will call your office December 22, 2010 at 3pm CST/4pm EST.

Ms. Oren Gelber
Associate

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From: Priscilla.Dunckel@bakerbotts.com [mailto:Priscilla.Dunckel@bakerbotts.com]
Sent: Monday, December 20, 2010 3:48 PM
To: Oren Gelber; Jennifer.Scannell@bakerbotts.com
Cc: Jess Collen; Thomas Gulick
Subject: RE: CAFE MYSTIQUE

I actually meant 3:00 EST/2:00 CST, but can move something and be available the 4:00 EST proposed time.

From: Oren Gelber [mailto:ogelber@collnip.com]
Sent: Monday, December 20, 2010 2:32 PM
To: Dunckel, Priscilla; Scannell, Jennifer
Cc: Jess Collen; Thomas Gulick
Subject: RE: CAFE MYSTIQUE

Priscilla,

We presume you mean 3:00pm CST/4:00pm EST on December 22, 2010.

We are available at 4:00pm EST December 22, 2010, but will not be available prior to that time.

Sincerely,

Oren

Ms. Oren Gelber
 Associate

COLLEN IP

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From: Priscilla.Dunckel@bakerbotts.com [mailto:Priscilla.Dunckel@bakerbotts.com]
Sent: Sunday, December 19, 2010 11:53 PM
To: Oren Gelber; Jennifer.Scannell@bakerbotts.com
Cc: Jess Collen; Thomas Gulick
Subject: RE: CAFE MYSTIQUE

Oren--

I'll be happy to have a call with you on December 22nd, but our office is closed on December 23rd for the holidays. Are you available at 3:00 p.m?

From: Oren Gelber [mailto:ogelber@collnip.com]
Sent: Friday, December 17, 2010 6:09 PM
To: Dunckel, Priscilla; Scannell, Jennifer
Cc: Jess Collen; Thomas Gulick
Subject: CAFE MYSTIQUE

Ladies,

We kindly request your attention to the attached correspondence.

Sincerely,

Oren

Ms. Oren Gelber
Associate

COLLEN *IP*

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SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 03-2465.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED THROUGH THE ELECTRONIC SYSTEM FOR TRADEMARK TRIAL AND APPEALS IN THE UNITED STATES PATENT AND TRADEMARK OFFICE.

CERTIFICATE OF SERVICE

I, Elie Garuy, hereby certify that I caused a true and correct copy of the foregoing MOTION FOR EXTENSION OF DISCOVERY AND ALL SUBSEQUENT DATES AND A FINDING THAT REGISTRANT HAS COMPLIED WITH 37 C.F.R. § 2.120(e) AND TBMP § 523.02 to be served on the following counsel of record, this 6 Day of January, 2011 via U.S. mail and email.

Priscilla L. Dunckel, Esq.
Jennifer Scannell, Esq.
Baker Botts LLP
2001 Ross Avenue
Dallas, Texas 75201-2980
priscilla.dunckel@bakerbotts.com
jennifer.scannell@bakerbotts.com

Elie Garuy

JMC/OG:lk

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